

## REMARKS

Claims 1-17 are currently pending in the subject patent application. In the subject Office Action, the Examiner objected to the drawings because: (1) in Fig. 5, reference numeral "46" should read --50--; and (2) in Fig. 5, reference numeral "52" should read --48--. The Examiner cited support for the recommended changes in Fig. 4 of the present patent application, as originally filed. Applicant wishes to thank the Examiner for having identified these errors, and has amended Fig. 5 to reflect the Examiner's recommendations. No new matter has been added by these changes.

The Examiner next objected to claims 3 and 13 because of the following informalities: in claims 3 and 13, "said ring-shaped thumb ringlet" should read --said adjustable thumb ringlet--. Applicant wishes to thank the Examiner for having noticed these errors, and has amended claims 3 and 13 in accordance with the Examiner's suggestions. No new matter has been added by these changes.

Claims 8, 9, 16 and 17 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, since the Examiner stated that: (1) in claims 8 and 16, "a finger ringlet disposed on the first shaft" is incorrect, since finger ringlet **20** and the adjustable thumb ringlet **32** are shown to be disposed on shaft **12**, and on shaft **24**, respectively, while the claims require that finger ringlet **20** and thumb ringlet **32** are disposed on the same shaft; and (2) in claims 9 and 17, "a finger stabilizer disposed on the first shaft" is incorrect, since the finger stabilizer **38** and the adjustable thumb ringlet **32** are shown to be disposed on shaft **12** and on shaft **24**, respectively, while the claims require that finger stabilizer **38** and thumb ringlet **32** are disposed on the same shaft. Applicant again thanks the Examiner for having pointed out these errors, and has amended claims 8, 9, 16, and 17 to reflect the identified errors. No new matter has been added by these changes, since support therefor may be found in Fig. 1, as originally filed.

Claims 1, 3, 4, 6-11 and 13-17 were rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pracht (U.S. Patent No. 5,109,608), since the Examiner stated that Pracht discloses a pair of scissors comprising a first shaft having a

handle portion (17) and a cutting portion (14) separated by a first pivot location; a circular adjustable thumb ringlet (15) having a hole (for receiving the end 20 of the pin 21, see Fig.6) and an open portion (i.e. the opening for receiving a thumb of a user); means in the form of a pin (21) for rotatably connecting the thumb ringlet (15) to the first shaft; a second shaft having a handle portion (12) and a cutting portion (11) separated by a second pivot location; and means (16) for pivotably connecting the second shaft to the first shaft in the region of the first pivot location and the second pivot location in such a manner that the cutting portion (14) of the first shaft and the cutting portion (11) of the second shaft cooperate as opposing cutting portions of the scissors, a finger ringlet (13) disposed on the first shaft and a finger stabilizer (24) disposed on the second shaft in the vicinity of the finger ringlet (13) as claimed. The Examiner continued that Pracht's pin (21) is considered "flexible" as claimed, since virtually anything will flex if enough pressure is applied to it (See, e.g., *Fredman v. Harris-Hub Co., Inc.* (DC NIII) 163 USPQ 397). To some extent, The Examiner asserted, Pracht's thumb ringlet (15) is considered being "deformable" if enough pressure is applied to it, and that Pracht's means for pivotably connecting the two shafts is in the form of a screw (16) and is capable of adjusting the force between the opposing cutting portions (11, 14) as claimed by tightening or loosening the screw. Applicant respectfully disagrees with the Examiner concerning this ground of rejection for the reasons set forth hereinbelow.

Claims 2 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Pracht (U.S. Patent No. 5,109,608), since the Examiner stated that Pracht's pair of scissors as set forth shows all the claimed structure except it is silent about the material the pin (21) is made of. However, the claimed plastic pin is not patentably distinct of Pracht's, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (See, e.g., *In re Leshin*, 125 USPQ 416). Applicant respectfully disagrees with the Examiner for the reasons set forth hereinbelow.

The Examiner objected to claim 5 as being dependent upon a rejected base claim, but stated that this claim would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The Examiner made of record the following prior art as considered pertinent to applicant's disclosure: U.S. Patent Numbers. 3,906,630, 4,184,249 and 4,254,551, 4,642,895 and 4,742,617, 5,060,381, 5,469,624, 5,781,999, and 6,249,977, but has not applied these references to the subject claimed invention. After carefully reviewing the cited art, applicant believes that no further response is required.

Briefly, the present invention includes a pivoted cutting instrument having an adjustable, articulated thumb ringlet. On page 6, lines 15-21, of the present Specification, as originally filed, the thumb ringlet of the present invention is described in detail. It is to be noticed that thumb ringlet **32** has an open portion, **66**, located approximately opposite hole **58** therein. This opening is clearly not for inserting the thumb of a user; rather, thumb ringlet **32** is fabricated from any metal that can be repeatedly bent such that arms, **68** and **70**, can be straightened or bent further and the thumb ringlet retain its adjusted shape, such that a single ringlet can serve several users. That is, the ringlet itself, into which a thumb is inserted, can be adjusted to accommodate different sized thumbs. Silver and stainless steel have been employed for thumb ringlet **32**, although other materials which can maintain their shape after repeated bending can be used.

Turning now to the rejection of claims 1, 3, 4, 6-11 and 13-17 under 35 U.S.C. 102(b) as being clearly anticipated by Pracht (U.S. Patent No. 5,109,608), the Examiner stated that Pracht discloses a circular adjustable thumb ringlet (15) having a hole (for receiving the end 20 of the pin 21, see Fig. 6) and an open portion (i.e., the opening for receiving a thumb of a user). Applicant respectfully disagrees with this characterization of applicant's invention. In particular, applicant submits that Pracht's thumb ringlet is not adjustable, only pivotable (See, Col. 4, lines 9-15 of Pracht). Moreover, applicant believes that open portion **66** of thumb ringlet **32** of the present invention is clearly described in Fig. 5 of the present invention, as originally filed, and on page 6, lines 15-21, of the present

Specification, as originally filed. It is the cooperation of arms **68** and **70** that provides the adjustability of thumb ringlet **32** (See also, present claims 3 and 4, as originally filed). Thus, applicant respectfully believes that Pracht does not describe the claimed structure of the present invention, as suggested by the Examiner.

A similar argument applies to the rejection of claims 2 and 12 under 35 U.S.C. 103(a) as being unpatentable over Pracht (U.S. Patent No. 5,109,608). Although the Examiner stated that Pracht shows all of the claimed structure of the subject claimed invention, applicant has shown the Pracht's thumb ringlet is not adjustable, but merely pivotable (see, e.g., col. 4 lines 9-14 of Pracht). Therefore, applicant respectfully believes that Pracht teaches away from the present invention and as a result cannot properly be cited as part of a *prima facie* case of obviousness.

In view of the amendments to the claims and to Fig. 5, and in view of the arguments presented hereinabove, applicant believes that subject claims 1-17, as amended, are in condition for allowance, and such action by the Examiner at an early date is earnestly solicited.

Reexamination and reconsideration are respectfully requested.

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Respectfully submitted,



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**AMENDMENTS TO DRAWING FIGURES**

Applicant has amended originally filed Fig. 5 in accordance with the suggestions provided by the Examiner.

**APPENDIX A**

**REPLACEMENT SHEET**

## **APPENDIX B**

### **ANNOTATED MARKED-UP DRAWING**

"Annotated Marked-up  
Drawing"

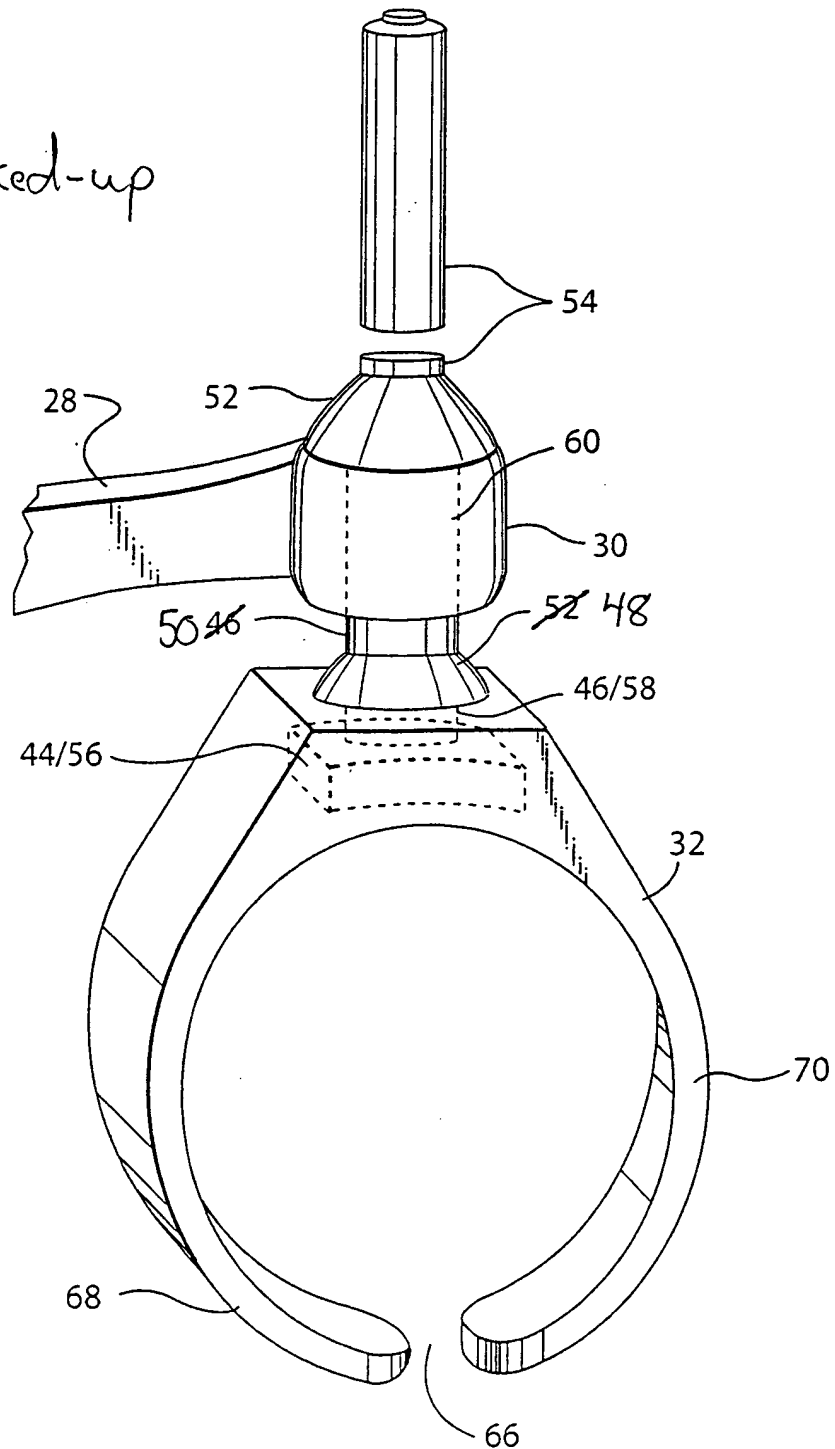


FIG. 5